

REMARKS

Claims 1-49 are pending in this Application. By this Amendment, claims 1, 22-23, and 48 have been amended. No new matter is added. Reconsideration in view of the above amendments and the following remarks is respectfully requested.

The Applicants appreciate that the Office Action indicates that claims 25-47 and 49 contain allowable subject matter. As discussed below, however, the Applicants respectfully submit that all pending claims, as amended, define patentable subject matter.

I. Rejection under 35 U.S.C. §101

The Office Action rejects claims 1-24 and 48 under 35 U.S.C. §101 as failing to fall within a statutory category of invention.

Specifically, in rejecting the claims, the Examiner states that “[w]hile the claims recite a series of steps or acts to be performed, a statutory ‘process’ under 35 U.S.C. 101 must (1) be tied to another statutory category (such as a particular apparatus), or (2) transform underlying subject matter (such as an article or material) to a different state or thing.” The Examiner then asserts that the rejected claims do not qualify as a statutory process because the claims neither transform underlying subject matter nor positively tie to another statutory category that accomplishes the claimed method steps.

To the extent that this rejection remains applicable to the claims, as amended, the Applicants respectfully traverse the rejection, as follows.

A. Claims 1 and 23

Responsive to the rejection, claims 1 and 23 have been amended to recite “a method implemented in an apparatus.” The Applicants submit that the claimed method steps are now positively tied to a statutory category (i.e., an apparatus).

Accordingly, the Applicants submit that claims 1 and 23 qualify as a statutory process.

As such, the Applicants respectfully request that the Examiner withdraw the rejection of claims 1 and 23 under 35 USC § 101.

B. Claims 22 and 48

Claims 22 and 48 recite, *inter alia*, “a computer-readable medium, comprising: ...” According to MPEP 2106.01, “[w]hen functional descriptive material is recorded on some *computer-readable medium*, it becomes structurally and functionally interrelated to the medium and *will be statutory* in most cases since use of technology permits the function of the descriptive material to be realized” (emphasis added). See also “Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility” published on the USPTO website on October 26, 2005, and rulings of *In re Beauregard*. Also, please note that the U.S. Board of Patent Appeals and Interferences, applying *In re Bilski*, held that computer product claims (i.e., Beauregard Claims) qualify as statutory subject matter. *Ex parte Bo Li*, 88 U.S.P.Q.2d 1695, 1698-1699 (P.T.O. Bd. Pat. App. & Int., 2008).

As claims 22 and 48 specifically recite functional descriptive material recorded on a “computer-readable medium,” the applicants respectfully submit that claims 22 and 48 comply with MPEP 2106.01 and recite statutory subject matter. Accordingly, Applicants respectfully request that the Examiner withdraw the rejection of claims 22 and 48 under 35 USC § 101.

II. Conclusion

Based on the foregoing, the Applicants submit that claims 1, 22-23, 25, 45-46, and 48-49 define patentable subject matter. Claims 2-21, 24, 26-44, and 47 depend from claims 1, 23, 25, and 46, respectively, and therefore, also define patentable subject matter, as well as for the additional features recited therein.

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claims 1-49 are earnestly solicited.

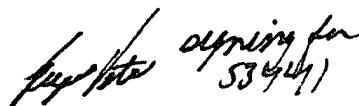
Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is requested to contact the undersigned at the telephone number set forth below.

Please charge any fees or overpayments that may be due with this response to Deposit Account No. 17-0026.

Respectfully Submitted,

Dated: 2/13/2009

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